

claims and cannot serve to patentably define the product over the prior of record. See MPEP 2113 and 2173.05 (p).

Applicants respectfully traverse the Section 102 rejection. Cohen relates to an incoherent radiation regulated voltage programmable link circuit and a method for making the circuit. The voltage programmable link circuit lowers the programming voltage of the link to that of the normal operating voltage by applying electromagnetic radiation to the link structure. The radiation may be radio frequency radiation, or ultraviolet radiation may be applied through a transparent conductive element.

Cohen's FIG. 1 relates to a voltage programmable link structure 10 formed upon a silicon substrate 12 (which can be a field insulator or an active device layer of an integrated circuit wafer). The link 10 further includes a field oxide layer 14 deposited over the substrate, a first metallization layer (M1) 16 deposited over the field oxide layer, a transformable insulator link material 18 deposited over the first metal layer, and a second metallization layer (M2) 20 deposited over the transformable insulator material. Once the first metal layer 16 has been formed, it is overlaid with the transformable link insulator material 18 at each programmable link site. The link insulator material is preferably a silicon oxide insulator 22 having silicon nitride layers 23 and 25 to physically separate it from the first and second conductive metals. In the preferred embodiment, the silicon nitride layers sandwich the silicon oxide layer to protect it from the metallization layers 16 and 20. This minimizes the chance of chemical reactions degrading the structure 10 over time.

First, Cohen's metal layer is not directly on the substrate, but is separated by the field oxide layer 14. Although the SiN layer 23 is formed above the metal layer 16, Cohen fails to show the silicon (Si) portion above the SiN layer. Here, item 22 relates to

a silicon oxide insulator that is made from the SiN layers 23 and 25. Hence, item 22 is not the Silicon portion as claimed.

In contrast, claim 1 recites the specifics of a silicon capacitor formed on an integrated circuit substrate, comprising: a metal portion on the substrate; a silicon nitride (SiN) portion sputtered on the substrate; and a silicon (Si) portion sputtered on the silicon nitride portion.

Cohen fails to show a number of elements recited in claim 1. Moreover, Cohen's is not related to on-chip capacitor, but relates to a link material. Hence, it cannot anticipate claim 1's capacitive structure. Cohen cannot anticipate claim 1 as well as those dependent therefrom.

The Section 103 Rejection

Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen. The Office Action noted that Cohen disclosed "the claimed invention except for having the desired thickness being approximately forty angstroms thick for each layer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have each layer being the desired thickness of approximately forty angstroms thick, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art."

As discussed above, Cohen lacks a number of claimed elements in claim 1. Hence, as claim 6 depends from claim 1, Cohen cannot render claim 6 obvious. Moreover, Cohen fails to show the specifics of claim 6. Applicant traverses the Office Action's characterization of these specifics as involving routine skill in the art.

Applicant points out that the Examiner bears the initial burden of factually establishing and supporting any *prima facie* conclusion of obviousness. *In re Rinehart*, 189 U.S.P.Q. 143 (CCPA 1976); M.P.E.P. § 2142. If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of nonobviousness. *Id.* In the instant case, the Examiner has not pointed to any evidence in Publication or how knowledge of those skilled in the art, provide a suggestion or motivation to modify the reference teaching so as to produce the claimed invention of claim 6. See *In re Zurko*, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) ([I]n a determination of patentability the Board cannot simply reach conclusions based on its understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings).

Under *Vaeck*, absent any evidence of a cited suggestion or reasonable motivation in the Johnson reference, or knowledge of those skilled in the art, for a single order specifying a plurality of recipients, *prima facie* obviousness of claim 6 has not been established. As such, it is respectfully requested that the § 103(a) rejection of independent claims (and dependent claims) be withdrawn and the claims be allowed.

Applicant notes that the MPEP Section 2143.01 - Suggestion or Motivation To Modify the References – has pronounced that a statement that modifications of the prior art to meet the claimed invention would have been " 'well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not

sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references.

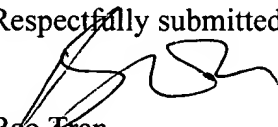
In view of the foregoing, Applicant requests withdrawal of all rejections.

CONCLUSION

Applicant believes that the above discussion is fully responsive to all grounds of rejection set for the in the Office Action.

If for any reasons the Examiner believes a telephone conference would in any way expedite resolution of the issues raised in this appeal, the Examiner is invited to telephone the undersigned.

Respectfully submitted,



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